***United States Court of Appeals***

***for the Second Circuit***


# BRIEF FOR APPELLEE

# 76-1432
# 76-1433
# 76-1434

*To be argued by*
HAROLD JAMES PICKERSTEIN

# United States Court of Appeals
## FOR THE SECOND CIRCUIT
### Docket Nos. 76-1432, 76-1433, 76-1434

UNITED STATES OF AMERICA,

*Appellee,*

—v.—

DAVID R. LEWIS, DAVID WILLIAMS and
RICHARD WASHINGTON,

*Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

## BRIEF FOR THE APPELLEE



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## Statutes and Rules Involved

18 U.S.C. § 2113(a):

> Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association;
>
> Shall be fined not more than $5,000 or imprisonment not more than twenty years, or both.

18 U.S.C. § 2113(b):

> Whoever takes and carries away, with intent to steal or purloin, any property or money of any other thing of value exceeding $100 belonging to, or in the care, custody, management, or possession of any bank, credit union, or any savings and loan association, shall be fined not more than $5,000 or imprisoned not more than ten years, or both;

18 U.S.C. § 2113(d):

> Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than $10,000 or imprisoned not more than twenty-five years, or both.

F. R. Evid. 404(b):

> Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show

that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

F.R. Crim. P. 14:

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection *in camera* any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial.

# United States Court of Appeals

## FOR THE SECOND CIRCUIT

**Docket Nos. 76-1432, 76-1433, 76-1434**

UNITED STATES OF AMERICA,

*Appellee,*

—v.—

DAVID R. LEWIS, DAVID WILLIAMS AND RICHARD WASHINGTON,

*Appellants.*

## BRIEF FOR THE APPELLEE

### Statement of the Case

This is an appeal from judgments of convictions in the United States District Court for the District of Connecticut entered by the Court (Newman, J.) on September 17, 1976, after jury verdicts of guilty on August 6, 1976.

On January 5, 1976, a Grand Jury at New Haven, Connecticut, returned a four count indictment (Criminal No. N-76-5) charging appellants Richard Washington, David Williams, David Lewis, and Aaron Stewart and Arthur Hendrix with the armed robbery of the West Side Office, Connecticut National Bank, Stamford, Connecticut, on September 20, 1973, in violation of 18 U.S.C. §§ 2113 (a), (b), and (d), and of conspiracy to rob the bank, in

violation of 18 U.S.C. § 371. On May 24, 1976, the indictment against Stewart and Hendrix was dismissed on motion of the government. The trial began on June 2, 1976, before the Honorable Thomas F. Murphy. On June 5, 1976, the jury reported itself unable to reach a verdict, and a mistrial was declared.

On August 2, 1976, the retrial began before the Honorable Jon O. Newman. On August 6, 1976, the jury returned verdicts of guilty with respect to Counts 1, 2 and 3 of the indictment (Count 4, the conspiracy count, was given a general sentence of 20 years; Lewis was sentenced to a general sentence of 12 years and Washington was sentenced to a general sentence on all three counts of 10 years. Lewis and Williams were already in custody serving other sentences; Washington was remanded pending appeal.

Timely Notices of Appeal to this Court were filed by all three defendants.

## Statement of Facts

On September 20, 1973, at approximately 9:15 A.M., the West Side Office of the Connecticut National Bank, Stamford, Connecticut, was robbed by four armed men wearing ski masks. (Tr. 248-49, 259-60, 265). This bank was insured by the Federal Deposit Insurance Corporation. (Tr. 244-45), and the sum of $12,268.99 was taken by the robbers. (Tr. 245).

Arthur Hendrix, who was originally charged with the robbery, cooperated with the Government and identified the other men who had committed the robbery with him. The charges against Hendrix were dismissed on the motion of the Government immediately before the start of the first trial of this matter. (Tr. 31). Hendrix testified

that David Williams, David Lewis, Richard Washington, Aaron Stewart and Joseph Daniels[1] participated in the robbery of this bank. (Tr. 30). Hendrix testified that he met with participants in the robbery, with the exception of Richard Washington, twice on the day before the robbery, September 19, 1973, in Queens, New York, and that at the second of these meetings, Joseph Daniels handed out jumpsuits, gloves and ski masks. (Tr. 41-42). David Williams instructed Hendrix to obtain a get-away car from a parking lot, and instructed Hendrix that if he had any trouble with the attendant, he should put the attendant into the trunk of the car. (Tr. 42). Hendrix testified that he was unsuccessful in obtaining a get-away car, and so he took his step-brother's car, to which he had the key. (Tr. 45).

Hendrix then testified that the robbers met in Queens the next morning and proceeded, caravan style, to Stamford. David Williams drove a green Oldsmobile Cutlass, Joseph Daniels drove the stolen car, Richard Washington drove a black Lincoln Continental, David Lewis drove a Buick Electra, and Hendrix drove his own car. (Tr. 47). Upon their arrival in Stamford, Daniels, Washington and Williams left the other men at a parking lot near the Connecticut Turnpike and went to check out the bank. (Tr. 49). They returned and instructed everyone as to their role in the robbery: Joseph Daniels was to drive a "second get-away car." Aaron Stewart and David Lewis were to go into the back door of the bank, David Williams and Hendrix would enter the front of the bank, and Richard Washington would be parked in front of the bank in the get-away car. (Tr. 50-51). Upon their arrival at the bank, these instructions were followed by all concerned.

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[1] Joseph Daniels was killed before the indictment in this case was returned.

The robbers were in the bank for a short period of time when Hendrix shouted "Time" because he was nervous. (Tr. 53). They left the bank, but Washington was not in the parking lot where he was supposed to be. (Tr. 54-55). After remaining on the sidewalk for a few moments, Washington drove up in the stolen car and they departed for New York. (Tr. 63). Hendrix went to the Unemployment Office in New York to establish an alibi, (Tr. 59), and then to Joseph Daniels' house, where Daniels, Stewart, Williams and Lewis were present. (Tr. 64). At this time, the proceeds of the robbery were divided.

The Government also called Julian Jefferson as a witness. Jefferson had participated in a robbery on August 31, 1973, in New York with Washington, Lewis, Williams and Daniels. (Tr. 178). Jefferson testified that Washington's role in the August 31, 1973, bank robbery was to drive the get-away car. (Tr. 181). He testified that as the robbers left the bank, Richard Washington was not present with the get-away car at his assigned location. (Tr. 183-184). He further testified that they proceeded to his girlfriend's apartment where they split up the proceeds, (Tr. 186), and that at this meeting, David Williams asked the robbers to each contribute $500.00 to him for the purchase of an Oldsmobile Cutlass which would be used to rob and case other banks. (Tr. 187). At this meeting, attended by Washington, Lewis and Williams, the next target for a robbery was mentioned as being a bank in Stamford, Connecticut, and Williams and Lewis agreed that this bank would be a "sweet thing." (Tr. 189, 197). Jefferson also testified that at the August 31, 1973, robbery David Lewis came into the bank with a shotgun and scooped money from the tellers' counters, (Tr. 179); Hendrix testified that at the September 20, 1973, robbery Lewis carried a shotgun as well. (Tr. 54). He stated that his, Jefferson's, role was to cover the customers with a rifle (Tr. 178), and that Williams was to cover the

customers (Tr. 179). Hendrix testified that at the September 20, 1973, robbery Lewis covered the customers with a shotgun (Tr. 54) and Williams took money from the tellers' counter (Tr. 54). In both robberies, however, Washington drove the get-away car.

This case was first presented to a grand jury in Connecticut in July, 1974; Hendrix testified at this grand jury proceeding. An indictment was presented to the grand jury; however, on the request of the Government, it was placed in a sealed envelope and was not returned to court. (Court exhibits 1, 2 and 3). Subsequently, Williams testified for the Government in two separate trials in New York and entered pleas of guilty to a total of seven bank robberies in both the Eastern and Southern Districts of New York. (Tr. 368-69, 545-46). The present indictment was returned on January 5, 1976, the first grand jury to which the case had been presented having expired.

## ARGUMENT

### I.

### The court did not err in denying Washington's motion for severance.

Washington claims error in the refusal of the trial court to grant him a severance. The severance motion, which had been made before trial, was denied without prejudice to its being renewed at trial. After the Government had rested, the defendant, Williams took the stand in his own behalf. On cross-examination, he was questioned concerning his participation in the August 31, 1973, robbery of the Long Island Trust Company, a robbery to which Williams had entered a plea of guilty. Washington had stood trial for this robbery, and had

been convicted, but a motion for new trial had been granted. Subsequent to the granting of the new trial, the Government dismissed the case against Washington.

The Government, at a bench conference, had indicated that it would seek to cross-examine Williams concerning his participation in this robbery, and also concerning the participation of the other defendants in that robbery. He was asked whether Richard Washington participated in the robbery with him; Williams stated, yes. (Tr. 406).[2] It was concerning this same robbery that the Government had offered the Julian Jefferson testimony. During argument on Washington's motion for a severance, the Government represented that if there were a separate trial of Washington, it would call Williams as a witness to testify as to the same facts as were elicited on cross-examination. (Tr. 411).[3]

A motion for a severance under Rule 14, F.R. Crim. P. is directed to the discretion of the trial court, *Opper* v. *United States*, 348 U.S. 84 (1954); *United States* v. *Jenkins*, 496 F.2d 57 (2d Cir. 1974), *cert. denied*, 420 U.S. 925 (1975), and the trial court has a continuing duty throughout the trial to grant a severance if prejudice appears. *Schaffer* v. *United States*, 362 U.S. 511 (1960).

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[2] Since Williams had pleaded guilty to this robbery, he could not claim a Fifth Amendment privilege with respect to this question.

[3] After being advised that this testimony would be sought by the Government on cross-examination, Washington failed to object until the actual question concerning Washington's participation in the earlier bank robbery was asked and answered. (Tr. 406). As Judge Newman noted, "I can't believe you didn't think in asking the question he was seeking not to elicit the name of Washington. . . ." Only at the point where the answer lists four names and asks about Washington is there an objection. (Tr. 408).

Because the trial court is in the best position to assess the potential for prejudice, its decision, reviewed for a clear abuse of discretion, *United States* v. *Barrerra*, 486 F.2d 333 (2d Cir. 1973), *cert. denied*, 416 U.S. 940 (1974), is rarely disturbed. *United States* v. *Cohen*, 518 F.2d 727 (2d Cir.), *cert. denied*, 423 U.S. 926 (1975). Even where a decision to sever would have been sustainable, the refusal to do so does not constitute an abuse of discretion. *United States* v. *Rivera*, 348 F.2d 148, 150 (2d Cir. 1965).

Given the strong federal policy favoring joinder, e.g., *United States* v. *Leonard*, 494 F.2d 955, 965 (D.C. Cir. 1974), in order to be entitled to severance a defendant must show substantial prejudice amounting to the denial of a fair trial and not merely that he would have had a better chance of an acquittal if he had been tried separately, *United States* v. *Corr*, slip op. 5891, 5911 (2d Cir. Oct. 22, 1976); *United States* v. *Cassino*, 467 F.2d 610 (2d Cir. 1972), *cert. denied*, 410 U.S. 913, 928, 942 (1973). As this court noted in *United States* v. *Vega*, 458 F.2d 1234, 1236 (2d Cir. 1972), *cert. denied*, 410 U.S. 982 (1973):

> A joint trial is improper, however, only if substantial prejudice results therefrom, and not if there would simply be a better chance of acquittal at a separate trial, an argument which is purely speculative at best.

The thrust of the claim advanced by Washington that the refusal of the court to grant a severance allowed the Government to bolster the Jefferson testimony through the cross-examination of Williams. A similar claim was advanced in *United States* v. *Borelli*, 435 F.2d 500, 502-3 (2d Cir. 1972) and was rejected, the court noting that in a joint trial, this type of strengthening frequently occurs. The court further noted that

> Unless joint trials are to be outlawed altogether, we would not hold that this kind of "prejudice" . . . the bolstering of the credibility of a prosecution witness . . . requires severance as a matter of law.

*United States* v. *Borelli*, *supra*, at 502-3. See also *United States* v. *DiGiovanni*, Slip op. 437 (2d Cir. Nov. 9, 1976).

The trial court here considered Washington's claims of prejudice, and found them to be, at best, speculative. The court then ruled

> Now its before the jury and now the only question in this joint trial is further evidence should be elicited and I think . . . it may be that where a codefendant gives it it is admissible anywhere and not sufficient grounds for severance, but where the Government says it will seek it in a separate trial at the moment there is no significant reason to believe that the evidence won't be forthcoming and won't be forthcoming in the same way as this trial. I don't see any reason to have a separate trial.

Tr. 414.

The trial court was clearly exercising its discretionary authority in denying a severance; there is no abuse of that discretion such as to deny Washington a fair trial here.[4]

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[4] Washington makes much of the fact that Williams has now purported to confess to this robbery, and to exculpate Washington and Lewis. Williams' unsworn confession, contained in a post-trial letter to the trial judge, is itself highly suspect; in any event, this fact was not known at the time the motion was made. Nevertheless, since Williams had pleaded guilty to the August 31, 1973, robbery, he would still be called as a witness in a separate trial of Washington to establish a prior similar act.

## II.

### The admission of the Julian Jefferson testimony was not error.

All of the defendants claim that the trial court erred in admitting the Julian Jefferson testimony concerning the prior similar act, namely, the August 31, 1973, bank robbery. There were two prongs to this testimony: first, that the robbery on August 31, 1973, was executed in a substantially similar fashion to the instant robbery, and second, that Richard Washington, the get-away driver in both robberies, did not execute his assignment on both occasions with proper dispatch.

It is firmly established in this Circuit that evidence of prior similar acts is admissible and will be excluded only when offered solely to prove criminal character. *United States* v. *Deaton*, 381 F.2d 114 (2d Cir. 1967); *United States* v. *Brettholz*, 485 F.2d 483 (2d Cir. 1973), *cert. denied*, 415 U.S. 976 (1974); *United States* v. *Warren*, 453 F.2d 738 (2d Cir.), *cert. denied*, 406 U.S. 944 (1972); *United States* v. *Miranda*, 526 F.2d 1319, 1331 (2d Cir. 1975), *cert. denied*, 45 U.S.L.W. 3249 (Oct. 5, 1976). More specifically, this "inclusory rule" means that

> Evidence of similar acts by a defendant is admissible to prove his knowledge, intent or design if knowledge, intent or design "is placed in issue in the case at trial, either by the nature of the facts sought to be proved by the prosecution or the nature of the facts sought to be established by the defense" (citations omitted).

*United States* v. *Freedman*, 445 F.2d 1220, 1224 (2d Cir. 1971). Additionally, evidence of prior similar acts is admissible to show absence of mistake or accident. E.g.,

*United States* v. *Magnus*, 365 F.2d 1007 (2d Cir. 1966), *cert. denied*, 386 U.S. 909 (1967); *United States* v. *Jordan*, 399 F.2d 610 (2d Cir.), *cert. denied*, 393 U.S. 1005 (1968).

The prior similar act offered in this case, while admissible as a matter of law, is nevertheless subject to a further test, for the trial court must exercise its discretion in balancing the probative value of the evidence against the possibility of prejudice and confusion. There must be a balance of

> . . . on the one side, the actual need for the other crimes evidence in light of the issues and the other evidence available to the prosecution, the convincingness of the evidence that the other crimes were committed and that the accused was the actor, and the strength or weakness of the other crimes evidence in supporting the issue, and on the other hand, the degree to which the jury will probably be roused by the evidence to overmastering hostility.

C. McCormick, *Evidence* Section 190 at p. 453 (2d ed. 1972). This test has been cited with approval by this Court. *United States* v. *Brettholz*, *supra*, at 487 *United States* v. *Bradwell*, 388 F.2d 619, 622 (2d Cir. 1968); *United States* v. *Bozza*, 365 F.2d 206, 213-14 (2d Cir. 1966).

When applied to the facts of this case, the various considerations set forth above weight heavily in favor of admissibility. None of the employees of the bank were able to identify the robbers, since they were all wearing masks. There were no fingerprints, since the robbers were all gloved. Indeed, the Government's case relied almost exclusively upon the testimony of Arthur Hendrix,

an accomplice and a co-defendant until just before the start of the trial. However, the Jefferson testimony is precisely relevant here. Not only did he describe a similar bank robbery, but he identified certain features common to both robberies which make these "signature" crimes. The use of the get away cars and the use of 6 participants in the robbery (4 men in bank, 1 get away driver and 1 back up driver) are common to both crimes; the fact that the individual participants in each had somewhat different roles does not diminish this fact. But, perhaps more important that the similarity between the prior similar bank robbery and the instant robbery is Jefferson's testimony that after the August 31, 1973, robbery, the participants met to plan the next one. At this meeting, both the defendants Lewis and Williams spoke of a bank in Connecticut that would be a "real sweet job"; the defendant Richard Washington was present at this meeting.[5] This is not then a case where "the minute peg of relevancy will be entirely obscured by the dirty linen hung upon it." *State* v. *Goebel*, 36 Wash. 2d 367, 379, 218 p. 2d 300, 306 (1950), cited in *United States* v. *Bradwell, supra*, at 622.[6]

Lewis' claim that this testimony is precluded by Rule 404(b), F. R. Evid. is not apposite. The Jefferson testimony was not offered to prove the criminal character of

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[5] Richard Washington stood trial for this bank robbery; he was convicted, but a new trial was ordered. Thereupon, the United States Attorney for the Eastern District of New York dismissed the indictment. A prior acquittal does not render proof of the prior act inadmissible. *United States* v. *Feinberg*, 383 F.2d 60 (2d Cir. 1967), *cert. denied*, 389 U.S. 1044 (1968); *Hernandez* v. *United States*, 370 F.2d 171 (9th Cir. 1966).

[6] Additionally, Williams chose to testify on his own behalf, and admitted his own participation in the August 31, 1973 bank robbery. He also implicated his codefendants in that robbery. (Tr. 419).

Williams, Lewis and Washington. Rather, as indicated above, it was offered to prove 1. similarity between the two crimes, and 2. preparation for the September 20, 1973, bank robbery. See 2 J. Weinstein, *Evidence* ¶ 404 [09] at pp. 404-61 to 404-66 (1976). The testimony offered falls squarely within the premissive provision Rule 404(b), and was properly admitted.

Defendants also claim error in the admission of the prior similar act testimony in the Government's case in chief. At the first trial of this case before Judge Murphy, the prior similar act testimony was excluded during the Government's case in chief, but was admitted during the rebuttal case. In this case, Judge Newman admitted the prior similar act testimony during the case in chief. It is not necessary for the Government to wait to present its prior similar act evidence until the defendant chooses either to testify or raise the issue in some other affirmative manner. *United States* v. *Brettholz*, *supra*, at 487-88; *United States* v. *Freedman*, *supra*, at 1224; *United States* v. *Johnson*, 382 F.2d 280, 281 (2d Cir. 1967).

## III.

### The trial court did not err in sustaining Aaron Stewart's claim of privilege.

Aaron Stewart, who had previously been indicted along with the defendants Lewis, Williams and Washington in this case, had the charges against him dismissed after the first jury had been empanneled, but before the taking of evidence. Thereafter, he was interviewed by agents of the Federal Bureau of Investigation, and was called as a witness in the second trial of this case. Stewart after consulting with counsel, decided to claim his privilege against self incrimination when called as a witness by the defendant Washington.

Washington asserts error in the trial court's finding that Stewart had a valid claim of privilege when questioned concerning this bank robbery. This argument is two fold: Washington apparently claims that the court itself should have granted Stewart immunity from prosecution, or alternatively, should have found that the possibility that Stewart would incriminate himself was so remote as to require a denial of his claim of privilege.

While the federal charges against Stewart had been dismissed, there was still the very real possibility that state charges concerning this bank robbery could have been brought against Stewart. It does not suffice to state that the fact that 3 years had elapsed with no state charges having been brought effectively precluded this possibility. The statute of limitations had not yet run, and neither the Government nor the court was in a position to predict what the State would do with respect to bringing armed robbery charges against Stewart. The intent of the Fifth Amendment privileges was not designed to require a witness to make such a Draconian choice: either testify and incriminate himself, or claim the privilege, and, with no adequate protection against state prosecution, be forced by the court to testify.

In a similar situation, this court has upheld a claim of privilege. *United States* v. *Domenech*, 476 F.2d 1229 (2d Cir.), *cert. denied*, 414 U.S. 840 (1973). In Domenech, the witness had entered a plea of one count of an indictment; the remaining count was to be dismissed when he was sentenced. Before sentencing, he was called as a witness by his codefendant, and asserted his privilege against self incrimination. The court upheld his claim, stating:

> Though it was very likely that count 2 would be dismissed that had not yet occurred and [the witness] can hardly be faulted for taking the most

> cautious position ... Moreover, under the existing precedants it was open to the State of New York to prosecute ... on the same ... transaction and his Fifth Amendment privilege included a right against self incrimination under the state penal laws.

*United States* v. *Domenech*, *supra*, at 1231. See also, *United States* v. *Anglada*, 524 F.2d 296 (2d Cir. 1971); *United States* v. *Llanes*, 398 F.2d 880, 884-85 (2d Cir. 1968); cf. *United States* v. *Chandler*, 380 F.2d 993 (2d Cir. 1967). This has been clear at least since *Hoffman* v. *United States*, 341 U.S. 479, 486-87 (1951), where the Court noted

> However, if the witness, upon interposing his claim, were required to prove the hazard in the sense in which a claim is usually required to be established in court, he would be compelled to surrender the very protection which the protection is designed to guarantee. To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer or an explanation of why it cannot be answered might be dangerous because injurious disclosure might result. The trial judge in appraising the claim "must be governed as much by his personal preception of the pecularities of the case as by the facts actually in evidence." See Taft, J. in Ex Parte Irvine, 74 F. 954, 960 (C.C.S.D. Ohio 1896).

Washington speculates that had Stewart's claim of privilege been overruled, his testimony would have led to a reasonable doubt in the jury's mind is wholly unjustified. It is not at all clear from the record that Stewart would have exculpated Washington. But wheth-

er he would or would not have exculpated Washington is not itself determinitive, the fact remains that he had a valid claim of privilege which was properly upheld by the trial judge.[1]

## IV.

### The peremptory challenge of two black veniremen did not deny Williams a fair trial.

Williams claims that the Government's use of two peremptory challenges against the only two blacks who appeared in the array of veniremen in this case denied him a fair trial. While Williams relies upon the decision of Judge Newman in *United States* v. *Robinson*, — F. Supp. —, 20 Cr. L. Rep. 2084 (D. Conn. October 15, 1976), he concedes that standing alone, the Government's use of peremptory challenges is not sufficient to reverse or to require a new trial. In view of the concession by Williams, the Government believes that only two things need be said. First of all, *Robinson* is, by its own terms, prospective; it should not be applied to this case, which was tried well before *Robinson* was decided. Secondly, the defendant failed to raise this point below; his failure to raise it at that time does not preserve this claim for re-

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[1] It makes no difference whether or not Stewart could be prosecuted again on the Federal bank robbery charges. Assuming arguendo that jeopardy attached when the first jury was empaneled, *Illinois* v. *Somerville*, 410 U.S. 458, 467 (1973); *United States* v. *Jorn*, 400 U.S. 470, 479 (1971). *United States* v. *Glover*, 506 F.2d 291, 297 (2d Cir. 1974), the dismissal by the Government afterwards would bar a federal retrial. Nevertheless, there still remains the possibility of a State charge concerning the bank robbery, which is not precluded by the federal dismissal. *Bartkus* v. *Illinois*, 359 U.S. 121 (1959). Therefore, there was a real possibility that Stewart could incriminate himself; this is all that is required for a valid claim of the privilege.

view by this court. See, e.g., *United States* v. *Indiviglio*, 352 F.2d 276, 280 (2d Cir. 1965) (en banc), *cert. denied*, 383 U.S. 907 (1966).[8]

## V.

### The testimony of Dr. Quist did not deny Lewis a fair trial.

During the presentation of its case in chief the Government called Dr. Raymond Quist, a speech pathologist who was treating David Lewis in prison for stuttering. When asked whether or not Lewis could speak fluently under stress, Quist responded, "It is very difficult, since I have worked with him in a very limited situation in the prison."[9] (Tr. 280). Lewis immediately moved to strike this remark and also for a mistrial. The mistrial motion was denied, but the motion to strike the reference was granted. (Tr. 280). Under these circumstances, the remark of Dr. Quist, unsolicited by the Government, is not a ground for reversal. *United States* v. *Bynum*, 485 F.2d 490, 503 (2d Cir. 1973), vacated on other grounds, 417 U.S. 903 (1974); *United States* v. *Stromberg*, 268 F.2d 256, 269 (2d Cir.), *cert. denied*, 361 U.S. 863 (1959).

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[8] This is especially true in view of the remedy adopted by Judge Newman in *Robinson*, namely that the names of the black jurors who had been excluded by use of Government peremptory challenges were placed back into the jury pool. Additionally, the Government has sought review in this court of Judge Newman's decision in *Robinson* by way of a petition for a writ of mandamus, filed on November 29, 1976.

[9] See Tr. 275-278, where this precise problem was discussed. In spite of the Government's warnings to Dr. Quist, he inadvertently made the remark in question.

## VI.

### The pre-indictment delay in this case violated neither the Sixth nor Fifth Amendment rights of Williams and Lewis.

Lewis and Williams both assign as error the pre-indictment delay in their case. The bank robbery that is the subject of this case occurred in September of 1972. During the month of July, 1974, a grand jury sitting in Connecticut heard testimony concerning the bank robbery from, among others, a participant in the crime, Arthur Hendrix. (Tr. 32). The Government presented an indictment to this grand jury, but requested that it not return the indictment to open court. (Williams, App. 69-71). The instant indictment was returned on January 5, 1976. In the interim, various cases pending against Williams and Lewis in both the Eastern and Southern Districts of New York were disposed of. (Tr. 175, 341, 368, 370).

### A. The pre-indictment delay in this case did not violate appellant Williams' Sixth Amendment guarantee of a speedy trial.

The principal safeguard of an individual's right to a speedy trial is the statute of limitations, in this case provided for in 18 U.S.C. Sec. 3282. *United States* v. *Marion*, 404 U.S. 307, 322-3 (1971); *United States* v. *Ewell*, 383 U.S. 116, 122 (196); *United States* v. *Vispi*, slip op. 513, 515-16 (2nd Cir. Nov. 15, 1976). When charges are filed within the statutory period, the protection afforded by the Sixth Amendment is activated only after the defendant assumes the status of "an accused," an event virtually always coinciding with arrest or indictment, whichever occurs earlier. *United States* v. *Marion*, supra, at 313; *United States* v. *Vispi*, supra, at 516. Williams contends

that he assumed the status of an accused even earlier, at the time of the first presentation of the case to the grand jury in July 1974. The explicit rationale of the opinions cited above do not, however, permit the sort of exception to those rulings which Williams urges this court to make in his case.[10] The purpose behind compelling a suspect to await formal indictment in open court or arrest before extending to him the protection of the Sixth Amendment is articulated in *United States* v. *Marion*, supra, at 321:

> "Until [indictment or arrest] occurs, a citizen suffers no restraints on his liberty and is not the subject of public accusation: his situation does not compare with that of a defendant who has been arrested and held to answer."

Pressing the Sixth Amendment into service in advance of such public accusation and/or restraints on the citizen's liberty was found to be sufficiently antithetical to the true purpose of the Sixth Amendment that:

> "[the] possibility of prejudice at trial is not itself sufficient reason to wrench the Sixth Amendment from its proper context." *Id.*, at 322

Adhering closely to the Supreme Court's reasoning in *United States* v. *Marion*, this court recently held that

> "Mere investigation, unaccompanied by arrest or public charges, does not pose a sufficient interference with a person's liberty, resources, employment or relations with others to warrant constitutional protection." *United States* v. *Vispi*, supra, at 517.

It is true that Williams was in custody at the time of the first grand jury presentation, but he was detained on

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[10] Neither Lewis nor Washington asserts a Sixth Amendment claim here.

wholly different bank robbery charges. Thus, the restraint on his liberty was in no w .y related to this indictment, and he was not arrested or otherwise held to answer on these charges until after the January 5, 1976, indictment. Williams misses the point entirely when he argues that the effect upon him was the same as if he had been incarcerated on the charges stemming from the Stamford bank robbery. His confinement on other, unrelated charges is simply not tantamount to a public accusation for the robbery of the West Side Office of The Connecticut National Bank in September, 1973.

The absence of an arrest or other public accusation of Williams in connection with the Stamford bank robbery thus thoroughly vitiates his argument that his Sixth Amendment right to a speedy trial has been violated.[11]

## B. The pre-indictment delay in this case did not violate the appellants' Fifth Amendment right to due process of law.

Williams and Lewis also argue that they were denied due process of law by the same delay between the commission of the offense charged and the return of the indictment. As noted in *United States* v. *Vispi*, *supra*, at 517,

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[11] Even if the weight of authority on this issue were rejected and this appellant held entitled to invoke his Sixth Amendment rights with respect to a pre-indictment delay, his Sixth Amendment claim would still fall for his failure to demonstrate either prosecutorial misconduct or actual prejudice arising from the time allowed to lapse between the commission of the offense charged and the indictment. *Wallace* v. *Kern*, 499 F.2d 1345 (2d Cir.), *cert. denied*, 420 U.S. 947 (1974). The absence of any such prosecutorial misconduct or significant actual prejudice to Williams from the pre-indictment delay is demonstrated below, pp. —— to ——.

N. 4, this court has yet to be squarely presented with the issue of whether it is necessary for an appellant to prove *both* prosecutorial misconduct and prejudice from the delay in order to make out a successful due process attack upon a pre-indictment delay in his case, or whether proof of either element would suffice. Three recent opinions in this Circuit strongly suggest that were the instant case found to raise such an issue, this Circuit would see fit to impose upon the appellant the burden of proving these elements conjunctively. *United States* v. *Brasco*, 516 F.2d 816, 818 (2d Cir. 1975), *cert. denied*, 423 U.S. 860 (1976); *United States* v. *Mallah*, 503 F.2d 971 (2d Cir.), *cert. denied*, 420 U.S. 995 (1975); *United States* v. *Eucker*, 532 F.2d 249, 255 (2d Cir. 1976).

The Government submits, however, that whether or not both elements must be proved by an appellant a pre-indictment delay, the Fifth Amendment argument of *these* defendants must fall for their failure to prove *either* element.

It is well established in this Circuit that proof of the *possibility* of prejudice resulting from pre-indictment delay is in itself insufficient to support a Fifth Amendment attack upon an indictment. *United States* v. *Foddrell*, 523 F.2d 86, 87-8 (2d Cir. 1975), *cert. denied*, 423 U.S. 950 (1976); *United States* v. *Iannelli*, 461 F.2d 483 (2d Cir. 1972), *cert. denied*, 409 U.S. 980 (1973). In fact, this is the only kind of argument presented by either appellant. Williams maintains that were it not for the pre-indictment delay, two of his witnesses possibly would have recalled with some exactitude his movements and activities during the day of the robbery. Lewis would have this court dismiss his indictment on the ground that his stuttering problem was possibly so much more notice-

able in late 1973 than in August, 1976, that a jury at the earlier date might have been more inclined to accept his contention that, contrary to Hendrix's testimony, Lewis could not have been the robber shouting orders out to the bank employees. Such arguments raise, at most, the mere possibility of prejudice. *United States* v. *Foddrell*, *supra*, at 88.

Even if these arguments do establish a colorable claim of something more than the mere possibility of prejudice, they still do not rise to the level necessary to trigger the due process remedy of dismissal. This Circuit has been very clear, for example, that the dimming of a defendant's memory due to a pre-indictment delay is insufficient prejudice to warrant dismissal. *United States* v. *Vispi*, *supra*, at 518; and *United States* v. *Finkelstein*, 526 F.2d 517, 526 (2d Cir. 1975), *cert. denied*, — U.S. — (1976).[12] Surely the possible dimming of a witness' memory stands on no different ground with respect to the nature and degree of prejudice required to support dismissal. Thus, Williams' Fifth Amendment claim must fail.

With respect to Lewis, it is manifest that the nature and significance of the prejudice he claims to have suffered do not approach any of the considerations found to be of constitutional significance in the Second Circuit's decision in *United States* v. *Capaldo*, 402 F.2d 821, 823 (2d Cir. 1971):

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[12] Other circuits are in accord. See e.g., *United States* v. *Alred*, 513 F.2d 330, 332 (6th Cir.), *cert. denied*, 423 U.S. 828 (1975); *United States* v. *Beckham*, 505 F.2d 1316, 1319 (5th Cir.), *cert. denied*, 421 U.S. 950 (1975); and *United States* v. *Jackson*, 504 F.2d 337, 341 (8th Cir. 1975), *cert. denied*, — U.S. — (1976).

> "Although appellant has attempted to meet this burden, we are convinced that he has not shown sufficient prejudice by the delay to render his prosecution invalid under the Fifth or Sixth Amendments. No witnesses were lost. Capaldo was able to give a coherent account of his version of the events on the day of the robbery; . . . He also had the benefit of contemporaneous statements given by the tellers and was able to cross-examine them at the trial. It is usually in the public interest, and frequently to the advantage of the prospective defendant, that charges not be brought until the prosecutor has completed his investigation and feels that there is sufficient likelihood of gaining a conviction."

Lewis argues that he stuttered worse in 1973 than at the time of the trial. Under this argument, *any* delay might affect the impression a jury might have as to his stuttering. However, this is not the quality of prejudice that the law forbids. At best, this claim is highly speculative; it does not approach the type of showing required by *Vispi, supra.*

Defendants also fail to demonstrate that the pre-indictment delay was an intentional attempt to harass them or gain a tactical advantage. (Lewis, it should be noted, ex-advantage or harass him (Brief of Appellant Lewis, 14)). Any number of nefarious Government schemes can be concocted to explain the pre-indictment delay, but conplicitly refrains from contending that the Government intentionally delayed the indictment to gain a tactical

clusory allegations of such prosecutorial misconduct are surely not enough to warrant reversal.[13]

The defendants point to no specific instances where the Government gained a tactical advantage over them by reason of this delay.

## VII.

### There was no error in the jury instruction regarding Williams' participation in prior bank robberies.

Williams assigns as error Judge Newman's cautionary instruction to the jury that it should weigh with caution and great care that portion of Williams' testimony implicating Washington and Lewis in a prior bank robbery. Williams concludes from the jury's verdict that the instruction given diminished the credence given to the rest of his testimony, which pertained to his own involvement in the bank robbery for which he has been convicted.

Even if the Court's charge on this matter had been no more elaborate than a recitation of the standard accomplice testimony instructions with respect to Williams' implication of his co-defendants in a prior bank robbery, it would still be the height of conjecture to suppose that

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[13] Subsequent to the presentation of this case to the grand jury in July, 1974, Williams and Lewis were involved in plea negotiations in both the Eastern and Southern District of New York with respect to other, unrelated bank robbery charges. Washington, during June of 1974, stood trial in the Eastern District of New York for bank robbery; his conviction, as noted above, was set aside on a new trial motion during this period. Because of the pendency of these cases in New York, it is clear that the Government wished to await their outcome before proceeding on this charge, retaining the option of not proceeding against these defendants in Connecticut.

this alone cast significant doubt on the balance of Williams' testimony, especially in light of the extensive evidence produced against him. This much Williams himself appears to concede when he notes that the instruction given is "probably insufficient standing alone, to require reversal of the case, or require a new trial." (Williams' Br. 22).

In fact, however, Judge Newman vigorously sought to protect the defendant from even the remote possibility that the sort of prejudice asserted would occur. The relevant portion of the charge on this point is set forth below:

> "Williams has acknowledged that he was an accomplice of the perpetrators of the robbery, so his testimony implicating others in that robbery should be similarly weighed with caution and great care. *I do not suggest, however, that when you consider Williams' testimony in his own behalf denying his involvement in this robbery, the Stamford robbery, that any special rule applies. The testimony of a Defendant in his own behalf should be assessed according to the same consideration you allow to any other witnesses.*

other than to point to a general tactical advantage obtained by the Government. Since they can not demonstrate any specific prejudice to them, or to any specific advantage gained by the Government over them, their claim must fall on its own weight. (Tr. 646-7) (emphasis supplied). Judge Newman's instruction here properly told the jury that Williams' testimony on his own hehalf was to be judged by the same rules that apply to other witnesses, see e.g., *United States* v. *Tyers*, 487 F.2d 828, 831 (2d Cir. 1973), *cert. denied*, 416 U.S. 971 (1974). It did not call especial attention to that portion of

Williams' testimony dealing with the August 31, 1973, bank robbery. Judge Newman was meticulous in instructing the jury that there was a distinction between Williams' admission concerning the August 31, 1973, robbery and his denials of participation in the September 20, 1973 robbery.[14] In no way did the judge instruct the jury to examine Williams' testimony as to the September 20, 1973, robbery in any special fashion; the instruction, read as a whole, is completely proper.

## CONCLUSION

**For all of the foregoing reasons, the United States submits that there was no prejudicial error committed in the trial of this case. The United States urges that the judgments of conviction appealed from be affirmed in all respects.**

Respectfully submitted,

PETER C. DORSEY
*United States Attorney*
*District of Connecticut*

HAROLD JAMES PICKERSTEIN
*Chief Assistant United States Attorney*
Post Office Box 1824
New Haven, Connecticut 06508

MICHAEL R. CANNON
*Law Student Intern*

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[14] Of course, with respect to the August 31, 1973, robbery, Williams' was not on trial, and was an accomplice by his own admission.

★ U. S. Government Printing Office 1976— 714—020—ACT—306

# United States Court of Appeals

## FOR THE SECOND CIRCUIT

No. 76-1432, 1433, 1434

U S A,
APPELLEE

vs.

LEWIS, et al,
APPELLANT

## AFFIDAVIT OF SERVICE BY MAIL

Patricia D. O'Hara, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 51 West 70th Street, New York, New York

That on the 17th day of December, 1976, deponent served the within

upon Howard C. Eckenrode, Esq., 147 Broad Street, Milford, Ct. 06460; Leslie Byelas, Esq. P.O. Box 3186, 622 Clinton Ave., Bridgeport, Ct. 06605; and, Kenneth Salaway, Esq., 125-10 Queens Boulevard, Kew Gardens, N. Y. 11415

Attorney(s) for the Appellant in the action, the address designated by said attorney(s) for the purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Post Office department within the State of New York.

Patricia D O'Hara

Sworn to before me,

This 17th day of December 1976

Edward A Quimby

EDWARD A. QUIMBY
Notary Public, State of New York
No. 24-3183500
Qualified in Kings County
Commission Expires March 30, 1977

76-1432

B

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

---

DOCKET NO. 76-1432

---

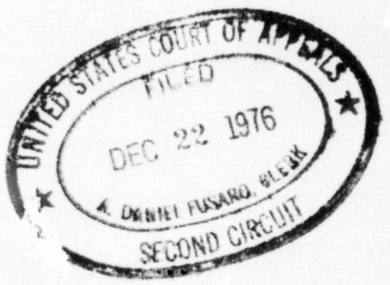
UNITED STATES OF AMERICA

Plaintiff-Appellee

V.

DAVID R. LEWIS ET AL

Defendant-Appellant

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APPENDIX TO

BRIEF OF DEFENDANT-APPELLANT DAVID R. LEWIS

---

Leslie Byelas
Counsel for Defendant-Appellant
P.O. Box 3186
622 Clinton Avenue
Bridgeport, Connecticut 06605

PAGINATION AS IN ORIGINAL COPY

## TABLE OF CONTENTS

NAGY AND BYELAS
ATTORNEYS AT LAW
622 CLINTON AVENUE
BRIDGEPORT, CONNECTICUT 06605

(203) 335-2525

ANDRÉ L. NAGY
LESLIE BYELAS
PETER L. GERETY III

PLEASE REPLY TO
P. O. BOX 3186
BRIDGEPORT, CONNECTICUT 06605

November 18, 1976

United States Court of Appeals
United States District Court
Foley Square
New York, New York 10007

Re: United States of America
Plaintiff appellee

vs.
David Lewis
Defendant-appellant

Gentlemen:

The Defendant-Appellant Lewis adopts the Appendix of the Co-Defendant David Williams and hereby agrees that the Williams Appendix shall be filed as a joint appendix.

Very truly yours,

Leslie Byelas

lb/cd

Felony ☒ Offense ☐ Misdemeanor ☐

JUDGE 08 Assigned Trial
MAGISTRATE
205 District | 03 Office
Disp./Sentence

• U.S. vs. LEWIS, DAVID R. defendant

DEV 5 | 1 | 76 N-76-5 2
No. of Defdnts 5

| U.S. CODE SECTION | OFFENSES | COUNTS |
|---|---|---|
| 18:2113(a) 2(a) | took money from bank by force | 1 |
| 18:2113(b) 2(a) | took money w/intent to steal from bank | 1 |
| 18:2113(d) 2(a) | put live in jeopardy by use of dangerous weapon | 1 |
| 18:371 | conspiracy | 1 |

MAGR. CASE NO.

BAIL • RELEASE
☐ Denied ☐ Personal Recog ☐ Unsecured Bond ☐ Conditional Release
AMT Set (000) $ ☐ 10% Depo ☐ Surety Bo ☐ Collateral
date ☐ Bail Not Made ☐ Bail Status Changed (See Docket) ☐ 3rd Party Custody ☐ PSA

U.S. Attorney or Asst.
Peter C. Dorsey
William F. Dow, III

Defense: ☐ CJA, ☐ Ret., ☐ Waived, ☐ Self, ☐ None, ☐ Other, ☒ FD, ☐ CD
Gregory B. Craig, 770 Chapel St.
New Haven, Conn. Leslie Byelas
622 Clinton Ave., [illegible]

| 1 ARREST | 1 INDICTMENT | 2 ARRAIGNMENT | 3 TRIAL | 4 SENTENCE |
|---|---|---|---|---|
| 2/9/76 or U.S. Custody Began on Above Charges | ☐ High Risk Defn. & Date Design'd | ☒ Information 1/5/76 ☐ Waived | 2/9/76 1st Plea "C" | Trial Set For | Voir Dire ☒ 5/24/76 | Disposition 8/6/76 | 9/17/76 |
| ☐ Prosecution Deferred | | ☐ Superseding Indict/Info ☐ | Final Plea | ☒ Not Guilty ☐ Nolo ☐ Guilty ☐ Not Guilty ☐ Nolo ☐ Guilty | Trial Began 6/2/76 ☐ J ☐ N J | ☒ Convicted ☐ Acquitted ☐ Dismissed: ☐ Nolled/Discontinued* | ☐ On All Cha ☒ On Lesser* Offense(s) ☐ WOP; ☐ |
| | | | | | Trial Ended 8/6/76 | | |

| | | DATE | INITIAL/No. |
|---|---|---|---|
| Search Warrant | Issued | | |
| | Return | | |
| Summons | Issued | | |
| | Served | | |
| Arrest Warrant | | | |
| COMPLAINT ▶ | | | |
| OFFENSE (In Complaint) | | | |

INITIAL APPEARANCE — INITIAL/No.

PRELIMINARY EXAMINATION OR REMOVAL HEARING — Date Scheduled — Date Held
☐ Waived ☐ Not Waived ☐ Intervening Indictment

Tape No. — INITIAL/No.

OUTCOME
☐ Dismissed ☐ Held for District GJ ☐ Held to Answer to U. S. District Court
BOND ☐ Exonerated ☐ To Transfer District
AT:
Magistrate's Initials ▶

• Show last names and suffix numbers of other defendants on same indictment/information
1) Hendrix, 3) Stewart, 4) Washington, 5) Williams

| DATE | PROCEEDINGS | V. Excludable Delay (a) | (b) | (c) |
|---|---|---|---|---|
| 1/5/76 | Indictment return and filed at New Haven. Bench warrant may issue and lodge as detainer. Zampano, J. m-1/6/76 | | | |
| 1/6/76 | Bench Warrant issued and handed to U.S. Marshal for service. | | | |
| 1/12/76 | Application for Writ of Habeas Corpus Ad Prosequendum filed by govt. and allowed. Newman, J. m-1/12/76. two cert. copies handed to U.S. Marshal for service. | | | |
| 2/9/76 | PLEA: Appointment of counsel, the Federal Public Def., until a review of the financial affidavit. Plea of not guilty entered to Cts 1 thru 4. Newman, J. m-2/9/76. | | | |
| 2/10/76 | CJA Form D appointing the Federal Public Defender to represent the deft., filed. Newman, J. m-2/10/76 copies mailed to Attys Dow and Craig. | | | |
| 2/23/76 | Deft. Lewis' Motion for a Bill of Particulars, Motion for Discovery and Inspection, Motion for Production of Evidence Favoable to the Accused, Motion for Leave to Join, Adopt, Or Consolidate Motions of Co-Defendants, Motion for Production At Trial, Motion for Production of Grand Jury Testimony, Motion to Suppress Photographic and Eyewitness Identification, Motion to Suppress Evidence Derived from over | 2 | ~~2/23/76E~~ | |

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC §3161(h) "SPEEDY TRIAL ACT"

| DATE 1975 | IV. PROCEEDINGS (continued) | V. EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
|---|---|---|---|---|---|
| 2/23/76 | Unlawful Electronic Surveillance, Motion for Disclosure of Electronic Surveillance, Motion for Disclosure Regarding Opening of First Class Mail, Motion to Extend the Deadline for Filing Motion, or in the Alternative, to Grant Leave to File Supplementary Motions, Motion for an Order Increasing the Number of Peremptory Challenges Availabel to Defense Counsel, filed by deft. | | | | |
| 2/23/76 | Deft. Motion to Dismiss and Motion to Impound and Preserve any and All notes, Reports and Memoranda of Federal Bureau of Investigation Agenst, Conn. State Police Officers and Bridgeport, Police Officers Relevant to the Instant Indictment, filed by deft. | | | | |
| 3/4/76 | Court Reporter's Tapes of Proceedings held on Feb. 9, 1976 filed. Gale, R. | | | | |
| 3/26/76 | Notice of Readiness, filed by govt. | | | | |
| 5/4/76 | CJA Form 20 substituting Leslie Byelas, for Gregory Craig, filed. Newman, J. copies distributed. | | | | |
| 5/10/76 | Appearance of Leslie Byelas, filed for the deft. | | | | |
| 5/10 | Motion to Withdraw, filed by Atty. Craig. | 3 | 5/10/76 | G | |
| 5/14 | Motion to Withdraw endorsed: Motion granted. Newman, J. m-5/14/76. copies mailed to Attys Dow and Bowman. | 3 | 5/14/76 | G | 4 |
| 6/15/76 | Motion for Relief, filed by deft. pro se | 3 | 6/15/76 | G | |
| 6/21/76 | Marshal's return showing service, filed: Writ of H. C. ad Prosequendum. | | | | |
| 6/22/76 | Motion for Relief endorsed: Motion denied as Moot, in view of transfer to F.C.I. Danbury. Newman, J. m-6/22/76. copies mailed to Deft and counsel of record. | 3 | 6/22/76 | G | 7 |
| 7/2/76 | Court Reporter's Notes of Proceedings (Plea) held on Feb. 9, 1976, filed. Gale, R. | | | | |
| 7/28 | Application for Writ of Habeas Corpus Ad Testificandum, filed and entered. Zampano, J. m-7/29/76. Two attest copies handed U. S. Marshal in New Haven. | | | | |

| | (a) Interval (per Section II) | (b) Start Date / End Date | (c) Lic. Code | (d) Total Days |
|---|---|---|---|---|

| DATE 1976 | IV. PROCEEDINGS (continued) | V. EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
|---|---|---|---|---|---|
| 2/24/76 | and Preserve any and all Notes, Reports and Memoranda of Federal Bureau of Investigation Agents, State Police Officers and Bridgeport, Plice Officers Relevant to the Instant Indictment, 11) Motion for An Order Increasing the number of Peremptory Challenges Available to the defense Counsel, 12) Motion for Leave to Join, Adopt, Or Consolidate Motions of Co-Defts. Motion to Extend the Deadline for Filing Motions, or In the Alternative, to Grant Leave to File Supplementary Motions, and Motion for a Bill of Particulars, filed by deft. | | | | |
| 3/4/76 | Court Reporter's Sound Recording of Proceedings (Plea) held on Feb. 9, 1976, filed. Gale, R. | | | | |
| 3/26/76 | Notice of Readiness, filed by govt. | | | | |
| 4/29/76 | Response to Motion for Discovery and Inspection of Defts Lewis and Stewart, Response to Deft Lewis' Motion for Bill of Particulars, Response to Deft. Stewart's Motion for Bill of Particulars, Response to Motion for Leave to Join, Adopt, or Consolidate Motions of Codefendants Lewis and Stewart, Response to Deft. Stewart's Motion for Prpduction at Trial, Response to Motion for Production of Grand Jury Testimony by Defts Stewart and Lewis, Response to Motion for Production of Evidence Favorable to the Accused by defts Stewart and Lewis, and Response to Motion to Impounds and Preserve any and All notes, Reports and Memoranda of Federal Bureau of Investigation Agenst, State Police Officer, and Bridgeport Police Officers Relevant to the Indictment, filed by Govt. | | | | |
| 5/3/76 | Response to Motions to Extend Deadline for Filing Motions, or, in the Alternative, to Grant Leave to File Supplementary Motion by Deft. Stewar and Lewis, Response to Motion for An Order Increasing the number of peremptory challenges available to Defense Counsel by Defts. Stewart and Lewis, filed by Govt. | | | | |
| 5/6/76 | Supplemental Response to Motion for An Order Increasing the Number of Pre-emptory challenges available to defense counsel by Defts. Stewart and Lewis, filed by govt. | 3 | 5/6/76 | G | |
| 5/12/76 | Application for Notice of Alibi, filed by govt. | | | | |
| 5/14 | Marshal's return showing service, filed: Subpoena to Produce. | | | | |
| 5/17/76 | Ruling on Pre-Trial Motions of Deft.'s Stewart and Lewis, filed andentered. Newman, J. m-5/17/76. copies mailed to all counsel of record. | 3 | 5/17/76 | G | |
| 5/17 | Following endorsement on deft's Motion to Withdraw Appearance: Since this case is on Judge Murphy's Trial Calendar for May 20, 1976, the Motion is denied, without prejudice to renewal before | | | | |

(continued)

| | (a) Interval (per Section II) | (b) Start Date End Date | (c) Lv. Code | (d) To Da |
|---|---|---|---|---|

| DATE 1976 | PROCEEDINGS | V. EXCLUDABLE DE |
|---|---|---|
| 5/17(contd) | Judge Murphy in the event new counsel appears and is ready for trial. Newman, J. m-5/18/76. Copies mailed to all counsel and defendant. | |
| 5/20 | Application for Notice of Alibi endorsed: Motion off w/o prejudice; Rule 12.1 does not require a Court order. Newman, J. m-5/20/76. copies mailed to all counsel of record. | |
| 5/20 | On TFM's Jury Assignment List: Ready. Mon. May 24, 1976, Jury Selection. Trial for June 2, 1976. Court defers ruling on oral Motion on Use of Prior Convictions of deft. Court hears counsel in chambers re: ex parte application for subpoena. Murphy, J. m-5/21/76. | |
| 5/21 | Marshal's return showing service, filed: 4 subpoena to Testify. | |
| 5/24 | On TFM's Jury List: Jury impanelled. Murphy, J. m-5/25/76. | |
| 5/24 | JURY TRIAL COMMENCES: Counsel for deft. Washington are not present and local counsel will select jury for them. Govt is not going to trial against the deft. Hendrix. Counsel for defts request a hearing date on Motion to Dismiss the Indictment for Pre-Indictment Delay, denied for reasons stated in open Court. Court Exs. 1 and 2 marked for ID. Court ex. 3 marked for ID and sealed. Motion to increase the nbr. of pre-emptory challenges-denied. Atty. Morse moves to renew motion to withdraw, motion denied may be renewed when counsel files an appearance. Court described the case to the jury. Two jurors excused for cause. Govt allowed six challenges and one for alternate challenge. Defts allowed 10 challenges and one for alternate challenge. Twelve jurors and two alternates sworn and impanelled. Testimony to begin on June 2, 1976. Jurors remain for further slection in other cases. Murphy, J. m-5/25/76. | |
| 6/2 | JURY TRIAL CONTINUES: 14 jurors present. Govt. informs Court that Jencks Act material re: Hendrix and Jefferson given to defense counsel. Motion of U. S. Atty. for Dismissal of Indictment re: Hendrix with Order of Court granting dismissal endorsed thereon, filed. Motion of U.S. Atty for Dismissal of Indictment re: Stewart with Order of Court granting dismissal endorsed thereon, filed. Deft. orally renews Motion to Dismiss and Memorandum in Support of Exparte Application for Subpoena and In Support of Motion to Dismiss, filed by deft. Williams. Court Ex. 3501 and 3502, marked for ID. Atty Byelas moves admission of Kenneth Salaway, Esq. for the purpose of this case--granted. Govt Exs. 1, 2, 3A, 3B, 4A,B,C,&D, 5A thru 5D and 6A thru 6T, marked for ID. Five Govt. witnesses sworn and testified. Govt Exs. 1,2 and 6C made full exhibits, Govt. Ex 7, filed. Govt. Ex. 8 marked for ID. Court Ex. 3503, marked for ID. Govt. Ex. 9A & B, 10A & B, marked for ID. Application for Writ of Habeas Corpus Ad Testificandum filed and Writ issued. Handed to Marshal for service. | over |

| DATE 1976 | PROCEEDINGS |
|---|---|
| 6/2 | Court Ex. 3504, marked for ID. Govt. Exs. 9B and 10B made full exs. Govt. Ex. 11, marked for ID. Govt. Ex. 6B,C,K, & H, made full exs. Govt. Ex. 11 made full Ex. Deft. Exs. A & B marked for ID. Govt. Exs. 5A thru D, made full exs. Govt makes Offer of Proof and reviews Stipulation to be read to jury. Deft. Washington moves for Directed Verdict, denied. Defts. Williams and Lewis join motion for Judgment of Acquittal-denied. Govt. reads Stipulation to the jury re: exhibits. Govt. Exs. #3A&B, 4A-4D and Govt Ex 12, filed. Govt. rests 3:24 P.M. One deft. witness sworn and testified. Deft. Ex. C, marked for ID. Court adjourned at 3:28 P.M. until 10:00 A.M. of 6/3/76. |
| 6/3 | Govt Request for Instructions, filed. |
| " " | Deft. Lewis' Request to Charge, filed. |
| 6/7 | Notice of Readiness, filed by govt ( for retrial ) |
| 6/7 | Marshal's return showing service: Subpoena to testify (4) |
| " " | Marshal's return showing service: Habeas Corpus |
| " " | Marshal's return showing service: Writ of H. C. ad Testificandum. |
| 6/7 | Marshal's non est return, filed: Subpoena ticket. |
| 6/3 | JURY TRIAL CONTINUES: Twelve jurors and two alternates present. Three deft. witnesses sworn and testified. Deft Exs. D & E, filed. Govt. Ex. 13, filed. Deft. Ex. F, marked for ID. Deft. Lewis rests. Two deft. witnesses sworn and testified. Deft. Washington rests at 1:05 P.M. Two deft. witnesses sworn and testified. Deft. Washington moves for mistrial, denied. Affidavit of David Williams in Support of Ex Parte Application for Issuance of Subpoeanas and Motion to Dismiss, filed. Supplement to Affidavit of David Williams, filed. Govt. Ex. 15 and 16, marked for ID. Deft. Williams rests at 3:30 P.M. Deft. Lewis's and Govt's Stipulation re: description of Charles Spruill read into record. One govt. rebuttal witness sworn and testified. One witness previously sworn recalled as rebuttal witness. Deft. makes offer of Proof. Deft. Ex. G. marked for ID. 4:25 P.M. Govt. rests in rebuttal. Juror Zemke excused by Court and replaced by alternate. 4:25 P.M. Jury excused until 10:00 A.M. Court adjourned at 4:27 P.M. until 10:00 A.M. of 6/4/76. Murphy, J. m-6/8/76. |
| 6/4 | JURY TRIAL CONTINUES: Deft. Washington moves to delay trial until witness arrives-denied for reasons stated in open Court. Deft. Washington moves for mistrial-denied. Deft. Washington moves ot have Govt. produce Mr. Ablerich and report, denied. Deft. Washington rests. Deft. Ex. G. made full Ex. Balance of all govt. Exs. 6A thru 6T made full exs. All parties rest at 10:15 A.M. 10:17 A.M. Alt. #1 replaces excused juror. Summations Govt. 10:18 to 10:42 A.M., Deft. Lewis 10:42 to 10:52A. M. Deft. Williams 10:52 A. M. to 11:20 A. M. Deft. Washington 11:20 A. M. to 11:40 A. M. Govt. rebuttal 11:40 A. M. to 11:55 A. M. Court charges jury 12:23 to 12:55 P.M. Exceptions to charge noted in chambers by Deft. Lewis, no other exceptions. Alt. excused. 12:56 P.M. Jury retires to begin deliberations. Court denies all pending motions. Court files letter dated May 20, 1976, from Court appt. defense counsel. "Application for Issuance of Subpoenas" with Subpoenas attached. Memorandum (re: Application of Court appt. Counsel for Issuance of Subpoenas), filed. Application denied w/o prejudice. All full exhibits and Indictment handed to Marshall and delivered to the jury. Note from jury read to counsel. Defense counsel and client's confer. Court's reply read to counsel and delivered to jury. Court Ex. 4, marked for ID. Court reads note from the jury. Court's reply read to counsel and delivered to jury. Court Ex. 5, marked. Court reads note from jury that they cannot reach a verdict. Jury |

UNITED STATES DISTRICT COURT
CRIMINAL·DOCKET

*U. S. vs* HENDRIX, et als

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| DATE 1976 | PROCEEDINGS (continued) (Document No.) | V. EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
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| 6/4 | returns to Courtroom for further instructions. Court instructs jury to continue deliberation tomorrow. Court Ex. 6, marked. Jury excused at 5:10 P.M. until June 5, 1976 at 10:00 A.M. Court adjourned until 10:00 A.M. of 6/5/76. Murphy, J. m-6/8/76. | | | | |
| 6/5/76 | JURY TRIAL CONTINUES: Jury of 12 begins deliberations at 10:00 A. M. 10:48 Note from jury. Jury reports to Courtroom at 10:50 A.M.-no further instructions. Court reads note from jury at 2:24 P.M. Reply by Court read to counsel and sent to jury. Court Ex. 7, marked. 3:40 P. M. Jury note read to counsel 3:42 P.M. Jury returns to Courtroom. Note from jury re read stating they cannot reach a verdict. 3:43 P.M. Jury excused by Court. Court declares a mistrial. Same bond to continue for deft. Washington. Court Ex. 8 marked for ID. 3:44 Court adjourned. Murphy, J. m-6/8/76. | | | | |
| 6/9/76 | Motion for Leave to Obtain Copy of Trial Transcript at Govt. expense, Motion for Evidentiary Hearing on Motion to Dismiss, Motion for PreTrial Conference, filed by deft. Williams | | | | |
| " " | Motion for PreTrial Conference, and Motion to Dismiss, filed by deft. Lewis | 3 | 6/9/76 | G | |
| 6/21/76 | Marshal's non est return, filed: Bench Warrant marked "dism." | | | | |
| 6/22/76 | Motion for Leave to Obtain Copy of Trial Transcript at Govt. Expense endorsed: Granted, as modified in open Court; Motion for Evidentiary Hearing on Motion to Dismiss endorsed: Denied for reasons stated in open Court. Motion for Pretrial Conference endorsed: Denied w/o prejudice. Newman, J. m-6/22/76. copies mailed to counsel of record. | | | | |
| " " | Motion for Pretrial Conference endorsed: Denied w/o prejudice, Deft. Lewis's Motion to Dismiss endorsed: Denied for reasons stated in open Court. Newman, J. m-6/22/76. copies mailed to counsel. | 3 | 6/22/76 | G | 13 |
| 6/21/76 | Hearing held on all motions for retrial: Atty Salaway's motion to Withdraw over to 10:00 A.M. on 6/28/76, in New Haven. Atty. Salaway and deft. not present. Benchwarrant to issue for deft. Washington. Clerk to send a certified letter to Atty. Salaway with instructions that he be present in Court in New Haven, at 10:00 A.M. on June 28, 1976 to present his motion and to show | | | | |

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CRIMINAL DOCKET

| DATE 1976 | PROCEEDINGS (continued) (Document No.) | V. EXCLUDABLE DELA (a) | (b) | (c) | (d) |
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| 6/21 | cont'd cause why sanctions should not issue for his failure to appear today. Deft. Williams Motion for Certain Transcripts, granted. Court executed CJA 21. Court approves transfer of Deft. to F.C.I. Danbury. Deft. Williams motion to dismiss, denied. Deft. Lewis' Motion for Approval by Court of two out of state subpoenas to issue at Govt. expense, granted. Deft. Lewis's motion to dismiss, denied. Retrial set for Aug. 2, 1976. Newman, J. m-6/23/76. | | | | |
| 6/22/76 | Certified letter sent to Atty. Salaway. See docket entry on Sheet for deft. Washington re:Bench Warrant | | | | |
| 6/23/76 | Court Reporter's Notes of Proceedings (Motion) held on June 21, 1976, filed. Gale, R. | | | | |
| 6/23/76 | Court Reporter's Notes of Proceedings (Plea re: Washington), filed. Gale, R. | | | | |
| 6/30/76 | Marshal's return showing service, filed: Subpoena to testify (3). | | | | |
| 7/2/76 | Court Reporter's Notes of Proceedings (Plea) held on Feb. 9, 1976, filed. Gale, R. | | | | |
| 6/30/76 | CJA Form 21 authorizing Eldridge Waith, Investigator, filed. Newman, J. copies distributed. | | | | |
| " " | CJA Form 21 authorizing transcript of trial, filed. Newman, J. copies distributed. | | | | |
| 7/7 | Marshal's return showing service, filed: Writ of H. C. ad Prosequendum. | | | | |
| 7/7 | STEWART: Form B mailed to A.O. | | | | |
| 7/12/76 | Court Reporter's Transcript of Proceedings (trial) held on June 2, and 3, filed. Beecher, R. | | | | |
| 7/19 | Application for Writ of H. C. ad Testificandum, filed by deft. Lewis and allowed. Zampano, J. m-7/20/76. two cert. copies handed to U.S. Marshal for service. | | | | |
| 7/23/76 | Marshal's return showing service, filed: Subpoena to testify (4) Subpoena to Produce (1) | | | | |
| 7/29 | Request for Instructions, filed by Govt. (Putting Lives in Jeopardy) | | | | |
| 7/29 | Request for Instructions, (Accomplice Testimony), filed by Govt. | | | | |
| 8/2/76 | SECOND TRIAL COMMENCES re;: LEWIS, WASHINGTON & WILLIAMS : Notice of Alibi and Questions on Voir Dire, filed by deft. Williams. Decision reserved on Deft. Washingtons Motion for Severance. Atty Eckenrode moves that Deft. Williams be admitted as co-counsel for purposes of cross examination Court will allow cross exam by deft. tentatively for part of cross examination. Atty. Salawy requests that Govt. be instructed to call deft. | | | | |

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U.S. vs WILLIAMS, WASHINGTON & LEWIS

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| DATE | PROCEEDINGS (continued) (Document No.) | V. EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
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| 8/2/76 | by his name, as well as possible witnesses who may testify. Request denied. Atty. Byelas moves for permission for all defense counsel to interview Aaron Stewart, former deft. Court will give Steart choice of being interviewed or not. Oath on Voir dire adminstered. 53 jurors respond to roll call. 12 jurors and 2 alternates sworn and impanlled One govt. witness sworn and testified. Govt. Exs. 1, 2, 3(a) 3(b), 4(a), 5(a-d) 6(a-t) 7 & 7(a) and 11, filed. Court adjourned at 5:15 P.M. Newman, J. m8/5/76. | | | | |
| 8/3/76 | SECOND TRIAL CONTINUES: 10:05 A.M. 14 jurors present. Govt. witness previously sworn resumes stand. Gov. Ex. 14, filed. Oral motion of Deft. Williams for mistrial, denied. 7 Govt. witnesses sworn and testified Oral Motion of Deft. Washington and Lewis for Mistrial, denied. Govt. Exs. 9(b) and 10(b), filed. Govt. Ex12, filed. 3:06 P.M. Govt. rests. Motions for Judgment of Acquittal denied. Deft. Washington Motion to Sever orally renewed, denied. Three Deft. Williams witnesses sworn and testified. Deft. Williams sworn and testified. Govt. Ex. 15, filed. 5:20 P.M. Court adjourned. Newman, J. m-8/5/76. | | | | |
| *8/4 | SECOND TRIAL CONTINUES: 10:00 A.M. 14 jurors present. Deft. Williams previously sworn resumes stand. Deft. Exh. H, filed. Oral motion of Deft. Washington to sever, denied. 12:39 P.M. Deft. Williams rests. One Deft. Lewis witness sworn and testified. 12:46 P.M. Deft. Lewis rests. Seven deft. Washington witnesses sworn and testified. Prior appt. of M. Mitchell Morse in this case to represent Aaron L. Stewart cont'd by Court to represent Stewart as witness. Deft. Ex. E, filed. 4:00 P.M. Court adjourned. Newman, J. m-8/6/76. | | | | |
| 8/5 | SECOND TRIAL CONTINUES: 10:00 A.M. 14 jurors present. One Deft. witness sworn and testified Deft. Exs. B & C, filed. Deft. Washington rests 10:33 A.M.. One Govt. rebuttal witness testified. Deft. Ex. I, filed. Govt. rests 11:45 A.M.. Oral motions for Judgment of Acquittal-denied. Govt. opens 11:35 A.M. to 11:57 A.M. Deft. Williams 11:57 A.M to 12:27 P.M. Deft. Washington 12:39 P.M. to 1:00 P.M. Deft. Lewis 12:27 P.M. to12:38 P.M. Govt. rebuttal 2:03 P.M. to 2:19 P.M. Court charges jury 2:20 P.M. to 3:04 P.M. over | | | | |

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UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

| DATE 1976 | PROCEEDINGS (continued) (Document No.) | V. EXCLUDABLE DEL (a) | (b) | (c) | |
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| 8/5 | Court rules that Count 4 will not go to the jury. Deft. Williams takes exception to charge. 3:09 P.M. Verdict Form and Indictment and Exs. given to jury and deliberations commence. Note from jury 5:05 P.M. Note from Jury 5:15 P.M. Court Exs. A & B, marked. 5:40 P.M. Jury excused until 8/6/76 at 10:00 A.M to continue deliberations. 5:45 Court adjourned. Newman, J. m-8/9/76. | | | | |
| 8/6 | Motion for Issuance of Subpoenas at govt Expense, filed by deft. Washington. and endorsed: Subpoenas approved. Newman, J. m-8/9/76. Two attested copies handed to U. S. Marshal at Hartford. | | | | |
| 8/6 | SECOND TRIAL CONTINUES: 10:00 A.M. 12 jurors report to continue their deliberations. 11:55 A.M. note from jury, Court. Ex. C, marked for ID. 12:20 P.M. Jury returns to Courtroom to have portion of Jefferson testimony read. 2:00 P.M.*Note from Jury. 2:20 P.M. Jury returns to Courtroom and portions of Washington's testimony read. 2:50 P.M. Jury returns verdicts of guilty on Cts. 1, 2 &3 as to all defts. Jury polled by Court and verdict verified. Motion of Govt. to revoke bond of Deft. Washington-granted. Sentencing set for 9/13/76 at 10:00 A.M. in New Haven. Newman, J. m-8/10/76. * Court Ex. D, marked for ID. | | | | |
| 8/11 | CJA Form 20 executed and approved. Newman, J. copies mailed to A.O. for payment. re: Atty. M. Mitchell Morse. | | | | |
| 8/10 | Marshal's return showing service, filed: 3 Subpoena tickets and 1 Subpoena to testify. | | | | |
| 8/12 | LEWIS: Motion for Judgment of Acquittal and Motion for New Trial, filed by deft. | | | | |
| 8/12 | WILLIAMS: Motion for Judgment of Acquittal and Motion for New Trial, filed by deft. | | | | |
| 8/20 | Marshal's return showing service, filed: Writ of H. C. | | | | |
| 8/20 | Disposition scheduled for Sept. 13, 1976 over to 9/17/76 at 10:00 A.M. Newman, J. m-8/20/76. | | | | |
| 8/23 | STEWART: Supplemental CJA Form 20 executed and approved. Newman, J. copies mailed to A.O. for payment. | | | | |
| 8/25/76 | CJA Form 21 authorizing transcript of trial, filed Newman, J. copies distributed; Deft. Lewis. | | | | |
| 9/1 | CJA jForm 21 authorizing payment of $300.00 to Eldridge Waith, Investigator, filed Newman, J. copies mailed to A.O. for payment. | | | | |

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UNITED STATES DISTRICT COURT
CRIMINAL DOCKET — *U. S. vs* STEWART, et als

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| DATE 1976 | PROCEEDINGS (continued) (Document No.) | V. EXCLUDABLE DEL (a) | (b) | (c) |
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| 9/3 | CJA Form 20 authorizing transcript of trial, filed Newman, J. copies distributed re: Deft. Williams. | | | |
| 9/13 | Marshal's return showing service, filed: Writ of H. C. Ad Testificandum. | | | |
| 9/20 | WASHINGTON: CJA Form 21 authorizing transcript of trial, filed. Newman, J. copies distributed. | | | |
| 9/17 | DISPOSITION: WILLIAMS ~~XXXXXXXXXXXX~~ Impr. 20 yrs. as a general sentence on all three cts. To commence this date, 9/17/76, and to run concurrently with unexpired portions of other federal sentences now being served. Court recommends that the deft. continue to be incarcerated within the Dist. of Conn. until the dispostion of anticipated post sentencing motions by deft. Newman, J. m-9/23/76 | | | |
| " " | LEWIS: DISPOSITION: Impr. 12 years as a general sentence on all three cts. To commence this date, 9/17/76, and to run concurrently with unexpired portions of other federal sentences now being served. Court recommends that the deft. continue to be incarcerated within the Dist. of Conn. until the disposition of anticipated post sentencing motions by deft. Newman, J. m-9/23/76 | | | |
| 8/30 | Notice of Appeal, filed by deft. Williams. | | | |
| 9/17 | Notice of Appeal to 2nd Circuti Court of Appeals from a Judgment of Conviction in the District Court of Connecticut, filed by deft. Lewis and endorsed: Leave to appeal in forma pauperis granted. Newman, J. m-9/20/76 | | | |
| 9/20 | LEWIS: Notice of Appeal, filed by deft. | | | |
| 9/21 | WILLIAMS: Notice of Appeal, filed by deft. | | | |
| 9/21 | WILLIAMS: Motion for Reduction of Sentence, filed by deft. | | | |
| 9/22 | WILLIAMS; Judgment and Commitment, filed and entered. Newman, J. m-9/22/76. Two Cert. copies handed to U.S. Marshal for service. | | | |
| 9/17 | WASHINGTON: DISPOSITION: Impr. 10 years as a general sentence on all three cts. The Court recommends that the deft. continue to be incarcerated within the district of Connecticut until the disposition of anticipated post trial motions by deft. Deft's Motion for Bail, pending appeal-denied. Newman, J. m-9/23/76. | | | |
| 9/22 | LEWIS: Judgment and Commitment, filed and entered. Newman, J. m-9/22/76. Two cert. copies handed to U.S. Marshal for service. | | | |

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

| DATE 1976 | PROCEEDINGS (continued) (Document No.) | V. EXCLUDABLE DELA (a) | (b) | (c) | ( |
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| 9/22 | WASHINGTON: Judgment and Commitment, filed and entered. Newman, J. m-9/22/76. Two cert. copies handed to U.S. Marshal for service. | | | | |
| 9/23 | WILLIAMS & LEWIS: Certified copies of docket entries and Notices of Appeal, mailed to Clerk, U.S.C.A.. copies of Notices of Appeal mailed to counsel on 9/22/76. | | | | |
| 9/21 | LEWIS: Motion for Reduction of Sentence, filed by deft. | | | | |
| 9/22 | WILLIAMS: Motion For Judgment of Acquittal and for New Trial endorsed: Motion denied. Newman, J m-9/22/76. copies mailed to counsel of record. | | | | |
| 9/22 | LEWIS: Motion for Judgment of Acquittal and Motion for New Trial endorsed: Motion denied. Newman, J. m-9/22/76. copies mailed to counsel of record. | | | | |
| 9/24 | Order for Return of Bond, filed and entered. Newman, J. m-9/24/76. Check #429 issued and given to Pearl Holderby, surety on bond. | | | | |
| 9/27 | Notice of Appeal, filed by deft. WASHINGTON | | | | |
| 9/27 | Motion for Reduction of Sentence, filed by deft. Washington. | | | | |
| 9/28 | WASHINGTON: Certified copy of Notice of Appeal mailed to Clerk, U.S.C.A.. Copy of notice of Appeal mailed to all counsel of record. | | | | |
| 9/27 | Court Reporter's Transcript of Proceedings (DISP) held on 9/17/76, filed. Collard, R. | | | | |
| 10/1 | Notice of appeal (2), filed by deft. Washington. | | | | |
| 10/4 | WASHINGTON: Notice of Appeal, filed 10/1/76 endorsed: Time to File Notice of Appeal extended until Oct. 1, 1976, F.R.A.P. 4, and leave to appeal in forma pauperis is granted. Newman, J. m-10/4/76. | | | | |
| 10/4 | WASHINGTON: Certified copies of notices of Appeal and docket entries mailed to Clerk, U.S.C.A. together with the Criminal Case Information (FORM A) as to all three defts. | | | | |
| 10/4 | Court Reporter's Notes of Proceedings (trial) held on Aug. 2, 3, 4 & 5, 1976, filed. Merchant, R. | | | | |
| " " | Court Reporter's Notes of Proceedings (DISP) held on 9/17/76, filed. Merchant, R. | | | | |
| " " | Court Reporter's Notes of Proceedings (trial) held on 8/6/76, filed. Merchant, R. | | | | |



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UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs STEWART Et als

76 N-76-5
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| DATE 1976 | PROCEEDINGS (continued) (Document No.) | V. EXCLUDABLE DELAY (a) | (b) | (c) | (d) |
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| 10/7 | JS-3's as to defts. Washington, Williams and Lewis mailed to the A.O. | | | | |
| 10/8 | Court Reporter's Transcript of Proceedings held on June 21, Aug. 2, 3, 4, 5, 6 and Sept. 17, 1976 filed. Gale, R. (Motions, Trial and Disp). | | | | |
| 10/6 | Record on Appeal sent U.S. Court of Appeals. Copies of Index and docket entries sent counsel. | | | | |
| 10/12 | Application for Writ of H. C. ad Testificandum filed by govt. and allowed. Zampano, J. m-10/12/76 Two cert. copies handed to U.S. Marshal for service. | | | | |
| 10/14 | Copy of Scheduling Order from the U.S.C.A., filed and entered. Fusaro, C. m-10/14/76. | | | | |
| 10/14 | Receipt of Record on Appeal acknowledged by Clerk, U.S.C.A. and filed. | | | | |
| 10/15 | Hearing on Motions to Reduce held: 3 deft. witnesses sworn and testified. 4 envelopes of polygraph test handed to Court. Counsel renew request to have polygraph exam administered by independent agency-decision reserved. Court Exs. 1 thru 7, filed. Newman, J. m-10/18/76. | | | | |
| 10/19 | Supplement to Record on Appeal sent U.S. Court of Appeals. Copies of Index sent counsel. | | | | |
| 10/18 | CJA Form 21 authorizing payment of $186.00 to Eugene Russell, Court Reporter, filed. Newman, J. | | | | |
| " " | CJA Form 21 authorizing payment of $1,116.00 to Gerald Gale, Court Reporter, filed. Newman, J. | | | | |
| " " | CJA Form 21 authorizing payment of $186.00 to Gerald Gale, Court Reporter, filed. Newman, J. | | | | |
| 10/18 | Court Reporter's Notes of Proceedings (hearing) held on 10/15/76, filed. Merchant, R. | | | | |
| 10/22 | Motion for New Trial, Memorandum In Support of Motion for New Trial and attachment, filed by deft. LEWIS. | | | | |
| 10/27 | Receipt of Supplement to Record on Appeal acknowledged by Clerk, U.S.C.A. except for Vol. 3, filed. | | | | |
| 11/1 | Marshal's return showing service, filed: Writ of H.C. ad Prosequendum. | | | | |
| 11/4 | WILLIAMS: CJA Form 21 approving the sum of $118.00 to Court Reporter Beecher, filed and entered. Newman, J. Copies distributed. | | | | |
| 11/12 | Govt's Response to Deft. Lewis' Motion for New Trial, filed. | | | | |

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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| UNITED STATES OF AMERICA | : | |
| | : | |
| v. | : | CRIM. NO. N76-5 |
| | : | |
| ARTHUR T. HENDRIX, DAVID R. LEWIS, AARON LEROY STEWART, RICHARD WASHINGTON and DAVID WILLIAMS | : | (18 USC 2113(a)(b)(d) and 371) |

# I N D I C T M E N T

THE GRAND JURY CHARGES:

## COUNT ONE

On or about September 20, 1973, at Stamford in the District of Connecticut, ARTHUR T. HENDRIX, DAVID R. LEWIS, AARON LEROY STEWART, RICHARD WASHINGTON and DAVID WILLIAMS, the defendants herein, did by force and violence and by intimidation take from the person and presence of another, money belonging to and in the care, custody, control, management and possession of the West Side Office of the Connecticut National Bank, 414 West Main Street, Stamford, Connecticut, the deposits of which were then insured by the Federal Deposit Insurance Corporation, in violation of Title 18, United States Code, Section 2113(a) and Title 18, United States Code, Section 2(a).

## COUNT TWO

On or about September 20, 1973, at Stamford in the District of Connecticut, ARTHUR T. HENDRIX, DAVID R. LEWIS, AARON LEROY STEWART, RICHARD WASHINGTON and DAVID WILLIAMS, the defendants herein, did take and carry away, with intent to steal and purloin, money in excess of $100 belonging to and in the care, custody, control, management and possession of the West Side Office of the Connecticut National Bank, 414 West Main Street, Stamford, Connecticut, the deposits of which were then insured by the Federal Deposit Insurance Corporation, in violation of Title 18, United States Code, Section 2113(b) and Title 18, United States Code, Section 2(a).

## COUNT THREE

On or about September 20, 1973, at Stamford in the District of Connecticut, ARTHUR T. HENDRIX, DAVID R. LEWIS, AARON LEROY STEWART, RICHARD WASHINGTON and DAVID WILLIAMS, the defendants herein, wilfully and unlawfully, did take by force, violence and intimidation, from the persons and presence of Donna Buchetto, Stella Vattaglia, Margaret Perry, Vera Carrieros, Lu Ann Sciglinpalia, John Danelon and Nicholas Galiatsos, money in excess of $100 belonging to and in the care, custody, control, management and possession of the West Side Office of the Connecticut National Bank at 414 West Main Street, Stamford, Connecticut, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and in committing the aforesaid acts, ARTHUR T. HENDRIX, DAVID R. LEWIS, AARON LEROY STEWART, RICHARD WASHINGTON and DAVID WILLIAMS, did assault Donna Buchetto, Stella Vattaglia, Margaret Perry, Vera Carrieros, Lu Ann Sciglinpalia, John Danelon and Nicholas Galiatsos and put their lives in jeopardy by the use of dangerous weapons, to wit, a pistol and a shotgun, in violation of Title 18, United States Code, Section 2113(d) and Title 18, United States Code, Section 2(a).

## COUNT FOUR

On or about September 20, 1973, at Stamford in the District of Connecticut, ARTHUR T. HENDRIX, DAVID R. LEWIS, AARON LEROY STEWART, RICHARD WASHINGTON and DAVID WILLIAMS, the defendants herein, did wilfully and unlawfully combine, conspire, confederate and agree together and with Joseph Daniels, named herein as a co-conspirator but not as a co-defendant, to commit an offense against the United States of America, that is, to take and carry away, with intent to steal, money in excess of $100 belonging to and in the care, custody, control, management and possession of the West Side Office of the Connecticut National Bank, 414 West Main Street, Stamford, Connecticut, the deposits of which were then insured by the Federal Deposit Insurance Corporation, in violation of Title 18, United States Code, Section 2113(b), all in violation of Title 18, United States Code, Section 371.

## OVERT ACTS

The grand jury charges that in furtherance of the aforesaid conspiracy and to accomplish the objects thereof, the defendants at the times and places hereinafter set forth did commit the following overt acts:

1. On or about September 19, 1973, the defendants met with each other and with Joseph Daniels.

2. On or about September 20, 1973, the defendants drove to the West Side Office of the Connecticut National Bank at 414 West Main Street, Stamford, Connecticut.

A TRUE BILL

FOREMAN

PETER C. DORSEY
UNITED STATES ATTORNEY

WILLIAM F. DOE, III

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT



UNITED STATES OF AMERICA,

Plaintiff,

vs. No. N-76-5 CRIM.

ARTHUR T. HENDRIX, DAVID R. LEWIS, AARON LEROY STEWART, RICHARD WASHINGTON and DAVID WILLIAMS,

Defendants.

MEMORANDUM

MURPHY, D.J.

Defendants Lewis, Stewart and Williams by their appointed counsel have applied for the issuance of subpoenas pursuant to Rule 17(b) for three U.S. Probation officers of the Southern and Eastern Districts of New York, a special agent of the F.B.I. and an Assistant United States Attorney for the Southern District of New York. The subpoena addressed to the probation officers requires each officer to bring with him the presentence investigation report that was made of the moving defendant in connection with criminal cases in the Southern and Eastern Districts of New York.

The applications, pursuant to the Rule, were made ex parte at a conference held in chambers, with Mr. Byelas representing defendant Lewis and Mr. Eckenrode representing defendant Williams. We were advised that attorney Morse, who is counsel for Stewart, joined in the applications.

The thrust of the applications is as follows:

Some time in July, 1974, Mr. Dow, an Assistant United States Attorney for the District of Connecticut, presented testimony to a grand jury in this District that

resulted in an unreturned indictment accusing these defendants of crimes related to the robbery of the Connecticut National Bank in Stamford, Connecticut, on September 30, 1973. We were further told that Mr. Dow requested the grand jury not to file the indictment. The grand jury having been discharged because its term expired, Mr. Dow subsequently presented testimony to a different grand jury. The new grand jury returned an indictment to this Court on January 5, 1976 accusing the same defendants of the same crimes.

We interviewed Mr. Dow in the presence of Mr. Eckenrode and Mr. Byelas, and Mr. Dow avowed that it was true that an indictment was voted at the time alleged and that, as he understood it, the foreman or the secretary to the grand jury put the paper in an envelope, sealed it, and at Mr. Dow's request did not return it to the Court. He also noted that the present indictment was filed on January 5, 1976, and that about two weeks ago the Clerk of this Court sent him, in a sealed envelope, what he believes is the prior "indictment", which he had not opened.*

After Mr. Dow was excused, Mr. Eckenrode argued to the effect that defendants have told their counsel that each was questioned in New York City, both in the Eastern District and in the Southern District, by probation officers not only with reference to the crimes which had been committed

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* The envelope was opened in open court this morning, May 24, 1976, with all counsel being present. It contained a three-page document entitled "Indictment," signed by the foreman and Assistant United States Attorney, and we have compared it with the Indictment filed on January 5, 1976 and they are identical.

in those Districts (bank robberies) but also with regard to the crime alleged in the indictment filed in this District on January 5, 1976. Also that they were questioned by an Assistant United States Attorney in the Southern District of New York - after each pleaded guilty to a crime in that District - concerning the facts of this Connecticut indictment. But no one made any admissions concerning the commission of such crime.

We were not told of any prejudice to any of the defendants as a result of the above related facts, nor anything else that might relate to the due process claim of these defendants.

During the presentation it was admitted that United States v. Marion, 404 U.S. 307 (1971), precludes any argument relating to a Sixth Amendment defense.

We are satisfied that we have not been furnished with any factual situation which relates even tangentially to a claim of due process violation. Accordingly, we deny the application without prejudice to permit counsel and their clients to furnish sworn proof in support of their claims. Since June 2, 1976 has been fixed as the trial date, we suggest that all counsel act with dispatch.

THOMAS F. MURPHY

Thomas F. Murphy
Senior United States District Judge

Dated: Waterbury, Ct., May 24, 1976.

We are not filing this Memorandum in order to preserve the ex parte status of the application. However, we are mailing copies to each attorney.